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17 Attorneys for Defendants and Third-Party Alliant
18 Insurance Services, Inc.

19 **UNITED STATES DISTRICT COURT**

20 **NORTHERN DISTRICT OF CALIFORNIA**

21 Arthur J. Gallagher & Co.,

22 Case No. 3:20-cv-05505 EMC

23 Plaintiff,
24 v.

25 **Defendants' and Third-Party
26 Alliant's Local Rule 79(f) Statement
27 Re: Gallagher's Administrative
28 Motion to Consider Whether
Others' Material Should Be Sealed**

29 Don Tarantino, an individual; Bernadette
30 Heater, an individual; Michael Machette,
31 an individual; Spencer Brush, an
32 individual,

33 [Supporting declarations of Robert
34 Bennetzen, Don Tarantino and
35 Bernadette Heater concurrently filed
36 herewith]

37 Defendants.

38 Ctrm: Hon. Edward M. Chen

39 Complaint Filed: August 7, 2020

1 Pursuant to Local Rule 79(f)(3), designating parties Don Tarantino, Mike Machette
 2 and third-party Alliant Insurance Services, Inc. hereby provide a statement under Local
 3 Rule 79-5(c)(1) setting forth the legal standard for filing materials under seal and
 4 providing reasons why Exhibits 9, 26, 27, 36, 37, 39, 42, 47, 48, 83 and 84 to Gallagher's
 5 Opposition to Defendants' Motion for Partial Summary Judgment should be filed under
 6 seal.

7

8 **I. Compelling Reasons Exist for Sealing Exhibits 9, 27, 36, 37, 39, 42,
 9 47, 48, 83 and 84.**

10 For non-discovery motions, the Ninth Circuit requires a party to provide "compelling
 11 reasons" why the Court should file information under seal.¹ What constitutes a
 12 "compelling reason" is "left to the sound discretion of the trial court."² Accepted
 13 "compelling reasons" include protecting "business information that might harm a
 14 litigant's competitive standing,"³ or information relating to a business's "internal review
 15 process[es]" or "sensitive information,"⁴ or materials that could provide insight into a
 16 company's "strategic and financial decisions,"⁵ or private information of employees or
 17 customers, including compensation information.⁶ As explained in the table below,

18 ¹ *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)
 19 (citation omitted).

20 ² *Nixon v. Warner Commc'ns, Inc.* 435 U.S. 589, 599 (1978).

21 ³ *Ctr. For Auto Safety*, 809 F.3d at 1097. *See also Nixon*, 435 U.S. at 598 ("[C]ourts
 22 have refused to permit their files to serve as ... sources of business information that might
 23 harm a litigant's competitive standing") (internal citations omitted).

24 ⁴ *Opperman v. Path, Inc.*, No. 13-0453, 2017 WL 1036652, at *3 (N.D. Cal. Mar. 17,
 25 2017).

26 ⁵ *Adtrader, Inc. v. Google LLC*, No. 17-7082, 2020 WL 6395528, at *2 (N.D. Cal. Feb.
 27 11, 2020)

28 ⁶ *Opperman*, 2017 WL 1036652, at *4. *See also Edifecs, Inc. v. Welltok, Inc.*, No. 18-
 1086, 2020 WL 128568, at *2 (W.D. Wash. Jan. 10, 2020) (finding compelling reasons to
 grant motion to seal exhibits containing "employee personal information," including
 "details about employee compensation"); *Gomo v. NetApp, Inc.*, No. 17-2990, 2019 WL
 1170775, at *3 (N.D. Cal. Mar. 13, 2019) (granting motion to seal documents relating to
 compensation information); *Troy v. Kehe Food Distrib., Inc.*, No. 09-0785, 2010 WL
 11566229, at *1 (W.D. Wash. Sept. 23, 2010) (granting motion to seal exhibit filed in

1 “compelling reasons” exist to seal the exhibits at issue.

2 3 Exhibit No.	4 5 Designating Party	6 7 Reasons for Sealing
9, 36, 37	Alliant	<p>These exhibits are internal Alliant documents about terms of employment for Don Tarantino, including compensation information. Compensation information is highly private to Mr. Tarantino and he does not share his compensation with the public. The documents also include confidential financial information about Alliant, which is a privately held company and non-party to this case, including its stock value and projections about future stock value. As a privately held company, Alliant’s stock value and projections regarding same are not publicly shared. Disclosure of such information about Alliant’s business could injure Alliant in the marketplace if made public.⁷</p> <p>Alliant and Mr. Tarantino note that Gallagher filed Exhibit 37, which was designated by Alliant as HIGHLY CONFIDENTIAL—ATTORNEYS EYES ONLY, publicly in violation of in violation of the Stipulated Protective Order (Dkt 59). This document is highly sensitive, reflecting, among other things, Mr. Tarantino’s proposed compensation terms and Alliant’s confidential financial information, including concerning its stock values and projections. Gallagher has filed a Motion to Remove Incorrectly Filed Document to file Exhibit 37 under seal.</p>
39	Alliant	<p>This exhibit is an email and attachment consisting of Don Tarantino’s employment agreement with Alliant. Mr. Tarantino’s employment agreement reflects the terms of his compensation. Compensation information is highly private to Mr. Tarantino and he does not share his compensation with the public.</p>
27, 83, 84	Tarantino	<p>These exhibits are documents concerning Don Tarantino’s discussions with Alliant about terms of employment, including compensation information. Compensation information is highly private to Mr. Tarantino and he does not share his compensation with</p>

support of class certification motion that contained “personal information about potential class members,” including “names, addresses, telephone numbers, and compensation information”).

7 Bennetsen Decl. ¶¶ 2-4; Tarantino Decl. ¶¶ 2-3.

1 Exhibit 2 No.	3 Designating 4 Party	5 Reasons for Sealing
6	7	8 the public. Exhibits 27 and 83 also include confidential 9 financial information about Alliant, which is a privately 10 held company and non-party to this case, including its stock value and projections about future stock value. As 11 a privately held company, Alliant's stock value and projections regarding same are not publicly shared. 12 Disclosure of such information about Alliant's business 13 could injure Alliant in the marketplace if made public. ⁸
14 42, 47, 48	15 Alliant	16 These exhibits are documents concerning Bernadette 17 Heater's compensation information at Alliant, as well as 18 her attendant taxes and benefits from Alliant. This 19 information is highly private to Ms. Heater and she 20 does not share it with the public. ⁹

11 Defendants and Alliant further respectfully submit that the passages in Gallagher's
12 summary judgment Opposition—specified in Gallagher's Administrative Motion—that
13 refer to these exhibits should also be filed under seal.

14

15 Respectfully submitted,

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DATED: April 14, 2022

17 MORGAN, LEWIS & BOCKIUS LLP

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By: /s/ Seth M. Gerber
19 Seth M. Gerber

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⁸ Tarantino Decl. ¶¶ 2-3; Bennetsen Decl. ¶¶ 2-4.

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⁹ Heater Decl. ¶¶ __; Bennetsen Decl. ¶¶ 2, 5.

1 **Certificate of Service**

2 I hereby certify that, on April 14, 2022, the foregoing document entitled
3 **“Defendants’ and Third-Party Alliant’s Local Rule 79(f) Statement Re:**
4 **Gallagher’s Administrative Motion to Consider Whether Others’ Material**
5 **Should Be Sealed”** was filed via the Case Management/Electronic Case Filing
6 (CM/ECF) system, with service to be made on all parties deemed to have consented to
7 electronic service via the automated generation and e-mailing of a Notice of Electronic
8 Filing (NEF) by the CM/ECF system.

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10 Dated: April 14, 2022

11 /s/ Seth M. Gerber
12 Seth M. Gerber

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